

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 3:00-cr-065
Also 3:16-cv-001

- vs -
District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

BRIAN KEITH ALFORD,

Defendant. :

TRANSFER ORDER

This case is before the Court on Defendant Brian Keith Alford's Request for Relief of Judgment pursuant to Fed. R. Civ. P. 60(b)(6)(ECF No. 159).

The judgment from which relief is sought is the judgment of February 1, 2008 (ECF No. 141) which dismissed with prejudice Alford's Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 132). Both Judge Rice and the Sixth Circuit denied a certificate of appealability (ECF No. 141 and *Alford v. United States*, Case No. 08-3186 (6th Cir. Sept. 3, 2008)(unpublished, copy at ECF No. 143)).

Since the date of judgment, Alford has filed a "Judicial Notice of Adjudicate Facts" (ECF No. 145). The Notice included a request for relief from judgment. The Magistrate Judge analyzed the Notice as a second or successive § 2255 motion which was filed without circuit

court permission and recommended that it be denied with prejudice on that basis as well as on the merits (Report and Recommendations, ECF No. 146). Judge Rice adopted that recommendation (ECF No. 150). On appeal, the Sixth Circuit held this Court should not have reached the merits of the motion because, being an attack on the conviction itself, it was “actually a successive motion to vacate judgment. *See Gonzalez v. Crosby*, 545 U. S. 524, 531 (2005). As such, the district court should have transferred the motion to this court for authorization to file such a motion. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). *United States v. Alford*, Case No. 11-4067 (6th Cir. Nov. 12, 2013)(unpublished, copy at ECF No. 156).

Like the prior “Judicial Notice” document, the instant Motion attacks the underlying criminal judgment, rather than the judgment denying relief under § 2255¹. Therefore it is a second-or-successive § 2255 Motion and is hereby ordered TRANSFERRED to the Sixth Circuit under *In re Sims, supra*.

January 4, 2016.

s/ *Michael R. Merz*
United States Magistrate Judge

¹ For that reason the Court has ordered it be assigned a new civil case number, 3:16-cv-001.